IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 5TH OCTOBER 2006 / 13TH ASWINA 1928

WP(C).No. 26091 of 2006(F)

PETITIONER:

T.G.UNNIKRISHNAN, SUB TREASURY OFFICER,
SUB TREASURY OFFICE, PATTAMBI, PALAKKAD DISTRICT.

BY ADV. SRI.G.PRABHAKARAN
SRI.P.SANTHOSH KUMAR (TR)

RESPONDENTS:

1. **THE STATE OF KERALA REPRESENTED BY THE PRINCIPAL SECRETARY (FINANCE) FINANCE DEPARTMENT GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR OF TREASURIES, THIRUVANANTHAPURAM.**

3. **THE SPECIAL OFFICER, DIRECTOR OF TREASURIES, THIRUVANANTHAPURAM.**

4. **SMT.MARIAMMA CHACKO, DISTRICT TREASURY OFFICER, CHENGANNUR.**

5. **SMT.R.B.NIRMALAKUMARI, ASSISTANT DISTRICT TREASURY OFFICER, CHENGANNUR.**

6. **RAJUMOHAN N.,DISTRICT TREASURY OFFICER, KOTTARAKKARA, KOLLAM DISTRICT.**

7. **NABLE BABY, SUB TREASURY OFFICER, KOLLAM.**

R1 to R3 BY GOVT. PLEADER SMT.N.SUDHA DEVI.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

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WP(C).No.26091 OF 2006-F.

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Dated this the 5th day of October, 2006.

J U D G M E N T

The petitioner belongs to the cadre of Sub Treasury Officer. He has filed this writ petition mainly for a direction to the 2nd respondent to re-cast the final seniority list of Junior Accountants in the Treasury Department as on 8-11-1982 (Ext.P8) published on 30-6-1987. It is contended that the seniority list ought to have been drawn up by giving effect to the conditions prescribed in Exts.P1 and P2 Government Orders and assigning him rank and seniority based on such re-casting. He has also sought for a direction to the respondents to pass orders on Ext.P7 representation and Ext.P11 reminder in the light of Ext.P10 judgment of the Supreme Court and to revise Ext.P8 final seniority list and to assign rank and seniority to him and similarly placed persons above those who got the benefit of inter-district transfer, and to grant further promotions based on the revised rank and seniority.

2. The petitioner commenced service as Junior Accountant on the advice of the State Public Service

Commission. His first appointment was in Palakkad district and his seniority was reckoned with effect from the date of effective advice vide Rule 27(c) of K.S. & S.S.R. He was promoted as Senior Accountant on 16-9-1985, as Selection Grade Accountant on 15-7-1998, as Junior Superintendent in December, 2000 and finally as Sub Treasury Officer on 21-6-2004. Ext.P8 seniority list has become final on 30-6-1987 and the same held the field and has been acted upon for the last 19 years.

3. It is contended that certain Junior Accountants including respondents 4 to 7 who, on request, got inter-district transfers are liable to forfeit their original seniority as laid down in Exts.P1 and P2. But they are allowed to reckon seniority from the date of advice. The unit of appointment is the revenue district. It is alleged that respondents 4 to 7 and similarly situated persons come within the mischief of Exts.P1 and P2 and that Ext.P8 seniority list prepared without giving effect to Exts.P1 and P2, is liable to be revised.

4. Ext.P10 judgment of the Supreme Court holds that inter-unit and inter-district transfers which are governed by the proviso to Rule 27(a) of K.S. & S.S.R. as also Exts.P1 and P2 Government orders shall entail in loss of

seniority gained on the basis of advice by P.S.C., and that the seniority of the transferees need be reckoned from the date of their joining duty in the new unit or district pursuant to the inter-district/inter-unit transfer. According to the petitioner, the above principle of law shall be applied to the impugned seniority list also. In that view, it is argued, that the 2nd respondent is bound to re-cast the seniority list, so that, the petitioner will get promotion to the post of Junior Accountant, Senior Accountant and still higher posts in preference to respondents 4 to 7 and others. According to the petitioner he had raised objections against Ext.P8 seniority list sometime in 1992 by filing Ext.P7 representation. It is also contended that having not received any reply to Ext.P10 representation, he had filed Ext.P11 reminder on 31-7-2006 wherein a reference is made to Ext.P10 judgment of the Supreme Court in Civil Appeal No.9527/2003. Ext.P10 judgment has since been reported in K.P.Sudhakaran v. State of Kerala (JT 2006(11) SC 101).

5. Heard Shri.Santhosh Kumar, learned counsel for the petitioner. I am unable to entertain this writ petition despite the persuasive arguments of the learned counsel in

support of the reliefs prayed for by the petitioner. No doubt, Ext.P10 judgment has laid down the principle to be followed in the matter of determining the seniority of inter-unit and inter-district transferees coming within the mischief of the proviso to Rule 27(a) of K.S. & S.S.R. as also Exts.P1 and P2 Government orders. But the short question here is, would it be just and proper to unsettle, at this distance of time, the seniority which held the field from 1987 onwards? In other words would it be proper to ignore the march of events that have taken place during the last about two decades and reverse the promotions that had taken effect till 2006. The answer must necessarily be in the negative.

6. It is well settled that reliefs sought for against seniority lists and promotions will be declined unless sought for within a reasonable time. This is so, for the reason that by lapse of time, rights of third parties will come into existence and get crystallised. In matters pertaining to seniority and promotions, the Constitution Bench of the Apex Court in Rabindra Nath Bose v. Union of India (AIR 1970 SC 470) has held as follows:

> "......The highest Court in this land has been given Original Jurisdiction to entertain

> petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay.
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> 35. We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years. ....."

7. The above principle, well known in service jurisprudence as the sit back theory, applies with full force to the facts of this case. It appears that the petitioner, inspired by Ext.P10 judgment, has approached this Court on an experimental basis. Even assuming that the petitioner had filed Ext.P7 representation in 1992, the same is hopelessly belated. The petitioner did not seriously pursue Ext.P7 and it has been lying dormant for a long period of time. The reminder filed by him as per Ext.P11 is intended to raise contentions in terms of Ext.P10 judgment. It will be sheer injustice to reopen, at this distance of time, a seniority list which had become

final as early as in 1982, even assuming that the same was prepared erroneously. The fact that the Apex Court has declared a principle of law while deciding the dispute between the parties before it, cannot be the foundation to rake up stale matters, at the instance of those who had slept over their rights.

This writ petition is, therefore, liable to be dismissed. I do so.

K.K.DENESAN, JUDGE.

kvs/-